



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF D-T-E-

DATE: NOV. 27, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a mathematics teacher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief, arguing that he is eligible for a national interest waiver. In September 2018, we issued a request for evidence (RFE) asking the Petitioner to provide Form ETA-750B, Statement of Qualifications of Alien, and evidence satisfying the three-part framework set forth in *Dhanasar*. The Petitioner did not respond to our RFE.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.<sup>1</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>3</sup> The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

Because *Dhanasar* was issued before we were ready to adjudicate the appeal, in September 2018 we provided an RFE to obtain additional information and evidence regarding the Petitioner's eligibility under the new framework. See 8 C.F.R. § 103.2(b)(8) (requests for evidence). In addition, the regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate." As the record did not include this document, we requested the Petitioner to submit a properly signed and fully executed Form ETA-750B.

### A. Appeal Abandoned

We may summarily dismiss an appeal if the Petitioner does not respond to our RFE. The regulation provides, in pertinent part:

If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the benefit request may be summarily denied as abandoned, denied based on the record, or denied for both reasons.

8 C.F.R. § 103.2(b)(13)(i). Our RFE specifically informed the Petitioner that "[w]e may dismiss your case if we do not receive your response to this RFE **within 48 days of the date on the cover letter.**" (Emphasis in original.) To date, more than 48 days have lapsed, and we have yet to receive

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<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>3</sup> The Petitioner presented an academic credentials evaluation indicating that his Doctor of Science degree in system and information science from [REDACTED] in Japan is the foreign equivalent of a "degree of Doctor of Philosophy in Computer Science earned at a regionally accredited institution of higher education in the United States." See 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(A).

a response from the Petitioner on issues we discussed in the RFE. As such, we will summarily dismiss the appeal as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

B. Eligibility under the *Dhanasar* framework

In the alternative, we find that the Petitioner has not demonstrated that he meets the requirements set forth in *Dhanasar*. The record reflects that, at the time of filing the Form I-140, the Petitioner was a mathematics teacher for [REDACTED] at [REDACTED]. On appeal, the Petitioner contends that he is a “highly qualified middle school mathematics teacher.” With respect to the first prong of the *Dhanasar* framework, while we find that the Petitioner’s proposed work teaching mathematics has substantial merit, the evidence is not sufficient to show this endeavor’s national importance.

To evaluate whether the Petitioner’s work satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. The relevant question is not the importance of the field or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor. *Id.*

In the present matter, the Petitioner’s evidence does not show that his proposed work has broader implications for his field, as opposed to being limited to the students at the school where he intends to teach. While the Petitioner asserts that his proposed endeavor serves the “national priority goal of closing achievement gap” between advantaged and disadvantaged students, this argument does not render the work of an individual teacher nationally important under the *Dhanasar* framework. In general, the value of qualified teachers to U.S. national educational initiatives is collective, and the Petitioner has not shown that his proposed work stands to have wider implications in the field of mathematics education.

The Petitioner’s documentation is not sufficient to demonstrate that his proposed endeavor is of national importance. While we acknowledge the merits of his work to create a positive learning environment and improve his students’ academic proficiency, the record does not show that the Petitioner’s teaching activities offer benefits that extend beyond his school to impact the field of mathematics education more broadly.<sup>4</sup>

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

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<sup>4</sup> In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

### III. CONCLUSION

As the Petitioner did not respond to our RFE, he abandoned his appeal. In addition, because he has not provided Form ETA-750B or met the requisite first prong of the *Dhanasar* analytical framework, we find that the Petitioner has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.

Cite as *Matter of D-T-E-*, ID# 1518573 (AAO Nov. 27, 2018)